

AN ACT

1 Amending the act of November 30, 2004 (P.L.1672, No.213),
2 entitled, "An act providing for the sale of electric energy
3 generated from renewable and environmentally beneficial
4 sources, for the acquisition of electric energy generated
5 from renewable and environmentally beneficial sources by
6 electric distribution and supply companies and for the powers
7 and duties of the Pennsylvania Public Utility Commission,"
8 further providing for definitions, for alternative energy
9 portfolio standards, for portfolio requirements in other
10 states, for health and safety standards and for interagency
11 responsibilities; and providing for Tier III alternative
12 energy sources and for capacity payments to alternative
13 energy sources.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. The definitions of "alternative energy credit,"
17 "alternative energy sources," "force majeure" and "reporting
18 period" in section 2 of the act of November 30, 2004 (P.L.1672,
19 No.213), known as the Alternative Energy Portfolio Standards
20 Act, are amended and the section is amended by adding
21 definitions to read:

22 Section 2. Definitions.

23 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Alternative energy credit." A tradable instrument that is
4 used to establish, verify and monitor compliance with this act.
5 A unit of credit shall equal one megawatt hour of electricity
6 from an alternative energy source and shall only be used to
7 satisfy the requirement to purchase Tier I, Tier II or Tier III
8 alternative energy credits. The alternative energy credit shall
9 remain the property of the alternative energy system until the
10 alternative energy credit is voluntarily transferred by the
11 alternative energy system.

12 * * *

13 "Alternative energy sources." The term shall include the
14 following existing and new sources for the production of
15 electricity:

16 (1) Solar photovoltaic or other solar electric energy.
17 (2) Solar thermal energy.
18 (3) Wind power.
19 (4) Large-scale hydropower, which shall mean the
20 production of electric power by harnessing the hydroelectric
21 potential of moving water impoundments, including pumped
22 storage that does not meet the requirements of low-impact
23 hydropower under paragraph (5).

24 (5) Low-impact hydropower consisting of any technology
25 that produces electric power and that harnesses the
26 hydroelectric potential of moving water impoundments,
27 provided such incremental hydroelectric development:

28 (i) does not adversely change existing impacts to
29 aquatic systems;
30 (ii) meets the certification standards established

1 by the Low Impact Hydropower Institute and American
2 Rivers, Inc., or their successors;

3 (iii) provides an adequate water flow for protection
4 of aquatic life and for safe and effective fish passage;

5 (iv) protects against erosion; and

6 (v) protects cultural and historic resources.

7 (6) Geothermal energy, which shall mean electricity
8 produced by extracting hot water or steam from geothermal
9 reserves in the earth's crust and supplied to steam turbines
10 that drive generators to produce electricity.

11 (7) Biomass energy, which shall mean the generation of
12 electricity utilizing the following:

13 (i) organic material from a plant that is grown for
14 the purpose of being used to produce electricity or is
15 protected by the Federal Conservation Reserve Program
16 (CRP) and provided further that crop production on CRP
17 lands does not prevent achievement of the water quality
18 protection, soil erosion prevention or wildlife
19 enhancement purposes for which the land was primarily set
20 aside; or

21 (ii) any solid nonhazardous, cellulosic waste
22 material that is segregated from other waste materials,
23 such as waste pallets, crates and landscape or right-of-
24 way tree trimmings or agricultural sources, including
25 orchard tree crops, vineyards, grain, legumes, sugar and
26 other crop by-products or residues.

27 (8) Biologically derived methane gas, which shall
28 include methane from the anaerobic digestion of organic
29 materials from yard waste, such as grass clippings and
30 leaves, food waste, animal waste and sewage sludge. The term

1 also includes landfill methane gas.

2 (9) Fuel cells, which shall mean any electrochemical
3 device that converts chemical energy in a hydrogen-rich fuel
4 directly into electricity, heat and water without combustion.

5 (10) Waste coal, which shall include the combustion of
6 waste coal in facilities in which the waste coal was disposed
7 or abandoned prior to July 31, 1982, or disposed of
8 thereafter in a permitted coal refuse disposal site
9 regardless of when disposed of, and used to generate
10 electricity, or such other waste coal combustion meeting
11 alternate eligibility requirements established by regulation.
12 Facilities combusting waste coal shall use at a minimum a
13 combined fluidized bed boiler and be outfitted with a
14 limestone injection system and a fabric filter particulate
15 removal system. Alternative energy credits shall be
16 calculated based upon the proportion of waste coal utilized
17 to produce electricity at the facility.

18 (11) Coal mine methane, which shall mean methane gas
19 emitting from abandoned or working coal mines.

20 (12) Demand-side management consisting of the management
21 of customer consumption of electricity or the demand for
22 electricity through the implementation of:

23 (i) energy efficiency technologies, management
24 practices or other strategies in residential, commercial,
25 institutional or government customers that reduce
26 electricity consumption by those customers;

27 (ii) load management or demand response
28 technologies, management practices or other strategies in
29 residential, commercial, industrial, institutional and
30 government customers that shift electric load from

1 periods of higher demand to periods of lower demand; or
2 (iii) industrial by-product technologies consisting
3 of the use of a by-product from an industrial process,
4 including the reuse of energy from exhaust gases or other
5 manufacturing by-products that are used in the direct
6 production of electricity at the facility of a customer.

7 (13) Distributed generation system, which shall mean the
8 small-scale power generation of electricity and useful
9 thermal energy.

10 (14) Energy from nuclear fission used to generate
11 electricity.

12 * * *

13 "Force majeure." Upon its own initiative or upon a request
14 of an electric distribution company or an electric generator
15 supplier, the Pennsylvania Public Utility Commission, within 60
16 days, shall determine if alternative energy resources are
17 reasonably available in the marketplace in sufficient quantities
18 for the electric distribution companies and electric generation
19 suppliers to meet their obligations for that reporting period
20 under this act. In making this determination, the commission
21 shall consider whether electric distribution companies or
22 electric generation suppliers have made a good faith effort to
23 acquire sufficient alternative energy to comply with their
24 obligations. Such good faith efforts shall include, but are not
25 limited to, banking alternative energy credits during their
26 transition periods, seeking alternative energy credits through
27 competitive solicitations and seeking to procure alternative
28 energy credits or alternative energy through long-term
29 contracts. In further making its determination, the commission
30 shall assess the availability of alternative energy credits in

1 the Generation Attributes Tracking System (GATS) or its
2 successor and the availability of alternative energy credits
3 generally in Pennsylvania and other jurisdictions in [the PJM
4 Interconnection, L.L.C. regional transmission organization (PJM)
5 or its successor] PJM. The commission may also require
6 solicitations for alternative energy credits as part of default
7 service before requests of force majeure can be made. If the
8 commission further determines that alternative energy resources
9 are not reasonably available in sufficient quantities in the
10 marketplace for the electric distribution companies and electric
11 generation suppliers to meet their obligations under this act,
12 then the commission shall modify the underlying obligation of
13 the electric distribution company or electric generation
14 supplier or recommend to the General Assembly that the
15 underlying obligation be eliminated. Commission modification of
16 the electric distribution company or electric generation
17 supplier obligations under this act shall be for that compliance
18 period only. Commission modification shall not automatically
19 reduce the obligation for subsequent compliance years. If the
20 commission modifies the electric distribution company or
21 electric generation supplier obligations under this act, the
22 commission may require the electric distribution company or
23 electric generation supplier to acquire additional alternative
24 energy credits in subsequent years equivalent to the obligation
25 reduced due to a force majeure declaration if the commission
26 determines that sufficient alternative energy credits exist in
27 the marketplace.

28 "Load-serving entities." As follows:

29 (1) Entities or the duly designated agents of the
30 entities, including load aggregators or power marketers,

1 that:

2 (i) serve end users within the PJM region; and
3 (ii) have been granted the authority or have an
4 obligation under a State law, local ordinance, regulation
5 or franchise to sell electric energy to end users located
6 within the PJM region.

7 (2) The term shall include end use customers that
8 qualify under State rules or utility retail tariffs to manage
9 directly their own supply of electric power and energy and
10 use of transmission and ancillary services.

11 * * *

12 "PJM." The PJM Interconnection, L.L.C. regional transmission
13 organization or its successor.

14 * * *

15 ["Reporting period."] "Reporting period" or "reporting year."
16 The 12-month period from June 1 through May 31. A reporting year
17 shall be numbered according to the calendar year in which it
18 begins and ends.

19 * * *

20 "Tier I projected price." The Tier I projected price shall
21 equal the average of the Tier I futures price for the current
22 reporting year and the subsequent two reporting years. For the
23 purposes of calculating the Tier I projected price, the Tier I
24 futures price for each reporting year shall be the average of
25 the closing price on each trade date during the calendar year
26 that ends immediately prior to the start of the current
27 reporting year for alternative energy credits that are eligible
28 to meet the Tier I renewable energy requirement in this
29 Commonwealth.

30 "Tier III alternative energy credit reporting period price."

1 As follows:

2 (1) Except as provided under paragraph (2), the Tier III
3 alternative energy credit reporting period price shall be
4 determined by the commission 60 days before the start of each
5 reporting year.

6 (2) For the first reporting period for the Tier III
7 program, the commission may determine the Tier III
8 alternative energy credit reporting period price no later
9 than 60 days after the start of the reporting year.

10 (3) The Tier III alternative energy credit reporting
11 period price shall be equal to the Tier I projected price and
12 shall not be less than the Tier III price floor or greater
13 than the Tier III price cap.

14 "Tier III alternative energy source." A zero-emission
15 alternative energy source that:

16 (1) Is derived from:

17 (i) Solar photovoltaic and solar thermal energy.
18 (ii) Wind power.
19 (iii) Low-impact hydropower.
20 (iv) Geothermal energy.
21 (v) Nuclear fission.

22 (2) Satisfies all of the following:

23 (i) The alternative energy source is interconnected
24 with capacity injection rights within the regional
25 transmission organization with responsibility for this
26 Commonwealth.

27 (ii) If the alternative energy source were to cease
28 operation or fail to come in-service, all of the
29 following would occur:

30 (A) The ability of this Commonwealth or regions

of this Commonwealth to maintain or decrease existing levels of volatile organic compounds or to comply with Federal or State air pollution control programs, standards or goals is reduced.

(B) The carbon dioxide emissions that result from electricity consumed in this Commonwealth are negatively impacted.

(C) The ability of this Commonwealth to maintain or decrease existing levels of carbon monoxide, lead, ground-level ozone, particulate matter, nitrogen oxide or sulfur dioxide is negatively impacted.

(3) On or after January 1, 2017, satisfies any of the following:

(i) Regardless of the alternative energy source's location, did not receive tax exemptions, deferrals, exclusions, allowances, payments, credits, deductions or reimbursements from another state calculated in whole or in part using a metric that provides value for emissions not produced by the alternative energy source.

(ii) Is not wholly owned by a municipal or cooperative corporation or a group, association or consortium of a municipal or cooperative corporations.

(iii) Did not, at any point during the Tier III program, recover some or all of the capital or operating costs of the resource through cost-based rates regulated by a state.

"Tier III price cap." As follows:

(1) Except as provided under paragraph (2), the Tier III price cap shall be initially equal to the product of 65% and the weighted average price of credits that were retired for

1 Tier I compliance for the reporting year ending May 31, 2017,
2 as reflected in the commission's 2017 Annual Report of
3 Alternative Energy Portfolio Standards Act of 2004.

4 (2) If the Commonwealth participates in a Statewide
5 emissions fee program or a regional multistate greenhouse gas
6 program, the initial Tier III price cap shall be adjusted
7 annually by the ratio of the average price for allowances
8 under the program for the previous reporting year in price
9 per ton divided by \$15 per ton.

10 "Tier III price floor." As follows:

11 (1) Except as provided under paragraph (2), the Tier III
12 price floor shall be initially equal to the product of 50%
13 and the weighted average price of credits that were retired
14 for Tier I compliance for the reporting year ending May 31,
15 2017, as reflected in the commission's 2017 Annual Report of
16 Alternative Energy Portfolio Standards Act of 2004.

17 (2) If the Commonwealth participates in a Statewide
18 emissions fee program or a regional multistate greenhouse gas
19 program, the initial Tier III price floor shall be adjusted
20 annually by the ratio of the average price for allowances
21 under the program for the previous reporting year in price
22 per ton divided by \$15 per ton.

23 "Tier III program." The period commencing at the beginning
24 of the 14th reporting year on June 1, 2019, to May 31, 2020.

25 * * *

26 Section 2. Section 3(a), (b), (e), (f) and (g) of the act
27 are amended and the section is amended by adding a subsection to
28 read:

29 Section 3. Alternative energy portfolio standards.

30 (a) General compliance and cost recovery.--

(1) From the effective date of this act through and including the 15th year after enactment of this act and each year thereafter, the electric energy sold by an electric distribution company or electric generation supplier to retail electric customers in this Commonwealth shall be comprised of electricity generated from alternative energy sources and in the percentage amounts as described under subsections (b) and (c).

(2) Electric distribution companies and electric generation suppliers shall satisfy both requirements set forth in subsections (b) and (c), provided, however, that an electric distribution company or an electric generation supplier shall be excused from its obligations under this section to the extent that the commission determines that force majeure exists.

(2.1) Beginning June 1, 2019, and each year thereafter,
Tier III alternative energy credits shall be purchased by
electric distribution companies as described under subsection
(c.1), provided, however, that an electric distribution
company shall be excused from its obligations under this
section to the extent that the commission determines that
force majeure exists.

(3) All costs for:

(i) the purchase of electricity generated from Tier I and Tier II alternative energy sources, including the costs of the regional transmission organization, in excess of the regional transmission organization real-time locational marginal pricing, or its successor, at the delivery point of the alternative energy source for the electrical production of the alternative energy

sources; and

(ii) payments for Tier I and Tier II alternative energy credits[, in both cases] that are voluntarily acquired by an electric distribution company during the cost recovery period on behalf of its customers shall be deferred as a regulatory asset by the electric distribution company and fully recovered, with a return on the unamortized balance, pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 (relating to sliding scale of rates; adjustments) as a cost of generation supply under 66 Pa.C.S. § 2807 (relating to duties of electric distribution companies) in the first year after the expiration of its cost-recovery period. After the cost-recovery period, any direct or indirect costs for the purchase by electric distribution companies of resources to comply with this section, including, but not limited to, the purchase of electricity generated from Tier I and Tier II alternative energy sources, payments for alternative energy credits, cost of credits banked, payments to any third party administrators for performance under this act and costs levied by a regional transmission organization to ensure that Tier I and Tier II alternative energy sources are reliable, shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 as a cost of generation supply under 66 Pa.C.S. § 2807.

(4) Any direct and indirect costs incurred by electric distribution companies to comply with subsection (c.1) and sections 8.1 and 8.2, including, but not limited to, the

1 purchase of Tier III alternative energy credits and payments
2 to any third-party administrators for performance under this
3 act shall be recovered on a full and current basis pursuant
4 to a nonbypassable adjustment clause under 66 Pa.C.S. § 1307.

5 (b) Tier I and solar photovoltaic shares.--

6 (1) Two years after the effective date of this act, at
7 least 1.5% of the electric energy sold by an electric
8 distribution company or electric generation supplier to
9 retail electric customers in this Commonwealth shall be
10 generated from Tier I alternative energy sources. Except as
11 provided in this section, the minimum percentage of electric
12 energy required to be sold to retail electric customers from
13 alternative energy sources shall increase to 2% three years
14 after the effective date of this act. The minimum percentage
15 of electric energy required to be sold to retail electric
16 customers from alternative energy sources shall increase by
17 at least 0.5% each year so that at least 8% of the electric
18 energy sold by an electric distribution company or electric
19 generation supplier to retail electric customers in that
20 certificated territory in the 15th year after the effective
21 date of this subsection is sold from Tier I alternative
22 energy resources.

23 (2) The total percentage of the electric energy sold by
24 an electric distribution company or electric generation
25 supplier to retail electric customers in this Commonwealth
26 that must be sold from solar photovoltaic technologies is:

27 (i) 0.0013% for June 1, 2006, through May 31, 2007.

28 (ii) 0.0030% for June 1, 2007, through May 31, 2008.

29 (iii) 0.0063% for June 1, 2008, through May 31,

30 2009.

1 (iv) 0.0120% for June 1, 2009, through May 31, 2010.

2 (v) 0.0203% for June 1, 2010, through May 31, 2011.

3 (vi) 0.0325% for June 1, 2011, through May 31, 2012.

4 (vii) 0.0510% for June 1, 2012, through May 31,

5 2013.

6 (viii) 0.0840% for June 1, 2013, through May 31,

7 2014.

8 (ix) 0.1440% for June 1, 2014, through May 31, 2015.

9 (x) 0.2500% for June 1, 2015, through May 31, 2016.

10 (xi) 0.2933% for June 1, 2016, through May 31, 2017.

11 (xii) 0.3400% for June 1, 2017, through May 31,

12 2018.

13 (xiii) 0.3900% for June 1, 2018, through May 31,

14 2019.

15 (xiv) 0.4433% for June 1, 2019, through May 31,

16 2020.

17 (xv) 0.5000% for June 1, 2020, and thereafter.

18 (3) Upon commencement of the beginning of the 6th
19 reporting year, the commission shall undertake a review of
20 the compliance by electric distribution companies and
21 electric generation suppliers with the requirements of this
22 act. The review shall also include the status of alternative
23 energy technologies within this Commonwealth and the capacity
24 to add additional alternative energy resources. The
25 commission shall use the results of this review to recommend
26 to the General Assembly additional compliance goals beyond
27 year 15 for Tier I and Tier II shares. The commission shall
28 work with the department in evaluating the future alternative
29 energy resource potential.

30 * * *

1 (c.1) Tier III share.--

2 (1) During the Tier III program, electric distribution
3 companies shall purchase Tier III alternative energy credits
4 equal to 50% of the total electric energy, net of system
5 losses, sold in a reporting period in a service territory by
6 the electric distribution companies and electric generation
7 suppliers in accordance with section 8.1(c) (3).

8 Notwithstanding any other provision of law, the obligations
9 of electric distribution companies under this subsection
10 shall not be subject to 66 Pa.C.S. § 2807(e) (3.5) or (3.7).
11 Nothing in this subsection shall be construed to obligate an
12 electric distribution company to purchase electric energy
13 from a Tier III alternative energy source.

14 (2) This subsection shall expire after an effective cost
15 of carbon emissions exists in this Commonwealth that is equal
16 to no less than an average of \$15 per ton over three
17 consecutive reporting periods as a result of the enactment of
18 a Statewide emissions fee program or participation by the
19 Commonwealth in a regional multistate greenhouse gas program.

20 (3) Upon the enactment of a Statewide emissions fee
21 program or participation by the Commonwealth in a regional
22 multistate greenhouse gas program, the commission shall
23 submit a notice to the Legislative Reference Bureau for
24 publication in the Pennsylvania Bulletin.

25 (4) This subsection shall expire on the date the notice
26 under paragraph (3) is published in the Pennsylvania
27 Bulletin.

28 * * *

29 (e) Alternative energy credits.--

30 (1) The commission shall establish an alternative energy

1 credits program as needed to implement this act. The
2 provision of services pursuant to this section shall be
3 exempt from the competitive procurement procedures of 62
4 Pa.C.S. (relating to procurement).

5 (2) The commission shall approve an independent entity
6 to serve as the alternative energy credits program
7 administrator. The administrator shall have those powers and
8 duties assigned by commission regulations. Such powers and
9 duties shall include, but not be limited to, the following:

10 (i) To create and administer an alternative energy
11 credits certification, tracking and reporting program.

12 This program should include, at a minimum, a process for
13 qualifying alternative energy systems and determining the
14 manner credits can be created, accounted for, transferred
15 and retired.

16 (ii) To submit reports to the commission at such
17 times and in such manner as the commission shall direct.

18 (3) All qualifying alternative energy systems must
19 include a qualifying meter to record the cumulative electric
20 production to verify the advanced alternative energy credit
21 value. Qualifying meters will be approved by the commission
22 as defined in paragraph (4).

23 (4) (i) An electric distribution company or electric
24 generation supplier shall comply with the applicable
25 requirements of this section by purchasing sufficient
26 alternative energy credits and submitting documentation
27 of compliance to the program administrator.

28 (ii) For purposes of this subsection, one
29 alternative energy credit shall represent one megawatt
30 hour of qualified alternative electric generation,

1 whether self-generated, purchased along with the electric
2 commodity or separately through a tradable instrument and
3 otherwise meeting the requirements of commission
4 regulations and the program administrator.

5 (5) The alternative energy credits program shall include
6 provisions requiring a reporting period as defined in section
7 2 for all covered entities under this act. The alternative
8 energy credits program shall also include a true-up period as
9 defined in section 2. The true-up period shall provide
10 entities covered under this act the ability to obtain the
11 required number of alternative energy credits or to make up
12 any shortfall of the alternative energy credits they may be
13 required to obtain to comply with this act. A force majeure
14 provision shall also be provided for under the true-up period
15 provisions.

16 (6) An electric distribution company and electric
17 generation supplier may bank or place in reserve Tier I and
18 Tier II alternative energy credits produced in one reporting
19 year for compliance in either or both of the two subsequent
20 reporting years, subject to the limitations set forth in this
21 subsection and provided that the electric distribution
22 company and electric generation supplier are in compliance
23 for all previous reporting years. In addition, the electric
24 distribution company and electric generation supplier shall
25 demonstrate to the satisfaction of the commission that such
26 credits:

27 (i) were in excess of the alternative energy credits
28 needed for compliance in the year in which they were
29 generated and that such excess credits have not
30 previously been used for compliance under this act;

(ii) were produced by the generation of electrical energy by alternative energy sources and sold to retail customers during the year in which they were generated; and

(iii) have not otherwise been nor will be sold, retired, claimed or represented as part of satisfying compliance with alternative or renewable energy portfolio standards in other states.

(7) An electric distribution company or an electric generation supplier with sales that are exempted under subsection (d) may bank credits for retail sales of electricity generated from Tier I and Tier II sources made prior to the end of the cost-recovery period and after the effective date of this act. Bankable credits shall be limited to credits associated with electricity sold from Tier I and Tier II sources during a reporting year which exceeds the volume of sales from such sources by an electric distribution company or electric generation supplier during the 12-month period immediately preceding the effective date of this act. All credits banked under this subsection shall be available for compliance with subsections (b) and (c) for no more than two reporting years following the conclusion of the cost-recovery period.

(8) The commission or its designee shall develop a registry of pertinent information regarding all available alternative energy credits, credit transactions among electric distribution companies and electric generation suppliers, the number of alternative energy credits sold or transferred and the price paid for the sale or transfer of the credits. The registry shall provide current information

1 to electric distribution companies, electric generation
2 suppliers and the general public on the status of alternative
3 energy credits created, sold or transferred within this
4 Commonwealth.

5 (9) The commission may impose an administrative fee on
6 an alternative energy credit transaction. The amount of this
7 fee may not exceed the actual direct cost of processing the
8 transaction by the alternative energy credits administrator.
9 The commission is authorized to utilize up to 5% of the
10 alternative compliance fees generated under subsection (f)
11 for administrative expenses directly associated with this
12 act.

13 (10) The commission shall establish regulations
14 governing the verification and tracking of energy efficiency
15 and demand-side management measures pursuant to this act,
16 which shall include benefits to all utility customer classes.
17 When developing regulations, the commission must give
18 reasonable consideration to existing and proposed regulations
19 and rules in existence in the regional transmission
20 organizations that manage the transmission system in any part
21 of this Commonwealth. All verified reductions shall accrue
22 credits starting with the passage of this act.

23 (11) The commission shall within 120 days of the
24 effective date of this act develop a depreciation schedule
25 for alternative energy credits created through demand-side
26 management, energy efficiency and load management
27 technologies and shall develop standards for tracking and
28 verifying savings from energy efficiency, load management and
29 demand-side management measures. The commission shall allow
30 for a 60-day public comment period and shall issue final

1 standards within 30 days of the close of the public comment
2 period.

3 (12) Unless a contractual provision explicitly assigns
4 alternative energy credits in a different manner, the owner
5 of the alternative energy system or a customer-generator owns
6 any and all alternative energy credits associated with or
7 created by the production of electric energy by such facility
8 or customer, and the owner or customer shall be entitled to
9 sell, transfer or take any other action to which a legal
10 owner of property is entitled to take with respect to the
11 credits.

12 (f) Alternative compliance payment.--

13 (1) At the end of each program year, the program
14 administrator shall provide a report to the commission and to
15 each covered electric distribution company showing their
16 status level of alternative energy acquisition.

17 (2) The commission shall conduct a review of each
18 determination made under subsections (b) [and] (c) and
19 (c.1). If, after notice and hearing, the commission
20 determines that an electric distribution company or electric
21 generation supplier has failed to comply with subsections (b)
22 [and] (c) and (c.1), as applicable, the commission shall
23 impose an alternative compliance payment on that electric
24 distribution company or electric generation supplier.

25 (3) The alternative compliance payment, with the
26 exception of the solar photovoltaic share compliance
27 requirement set forth in [subsection] subsections (b) (2) and
28 (c.1), shall be \$45 times the number of additional
29 alternative energy credits needed in order to comply with
30 subsection (b) or (c).

(4) The alternative compliance payment for the solar photovoltaic share shall be 200% of the average market value of solar renewable energy credits sold during the reporting period within the service region of the regional transmission organization, including, where applicable, the levelized up-front rebates received by sellers of solar renewable energy credits in other jurisdictions in the PJM [Interconnection, L.L.C. transmission organization (PJM) or its successor.] region.

(4.1) The alternative compliance payment for the Tier III share shall be 200% of the Tier III alternative energy credit reporting period price for the applicable reporting period times the number of additional alternative energy credits needed in order to comply with subsection (c.1).

(5) The commission shall establish a process to provide for, at least annually, a review of the alternative energy market within this Commonwealth and the service territories of the regional transmission organizations that manage the transmission system in any part of this Commonwealth. The commission will use the results of this study to identify any needed changes to the cost associated with the alternative compliance payment program. If the commission finds that the costs associated with the alternative compliance payment program must be changed, the commission shall present these findings to the General Assembly for legislative enactment.

(g) Transfer to sustainable development funds.--

(1) Notwithstanding the provisions of 66 Pa.C.S. §§ 511 (relating to disposition, appropriation and disbursement of assessments and fees) and 3315 (relating to disposition of fines and penalties), alternative compliance payments imposed

1 pursuant to this act for failure to comply with subsections
2 (b) and (c) shall be paid into Pennsylvania's Sustainable
3 Energy Funds created under the commission's restructuring
4 orders under 66 Pa.C.S. Ch. 28 (relating to restructuring of
5 electric utility industry). Alternative compliance payments
6 shall be paid into a special fund of the Pennsylvania
7 Sustainable Energy Board, established by the commission under
8 Docket M-00031715, and made available to the Regional
9 Sustainable Energy Funds under procedures and guidelines
10 approved by the Pennsylvania Energy Board.

11 (2) The alternative compliance payments for failure to
12 comply with subsections (b) and (c) shall be utilized solely
13 for projects that will increase the amount of electric energy
14 generated from alternative energy resources for purposes of
15 compliance with subsections (b) and (c).

16 (3) The alternative compliance payments for failure to
17 comply with subsection (c.1) shall be divided as follows:

18 (i) Fifty percent shall be paid consistent with
19 paragraphs (1) and (2).

20 (ii) Fifty percent shall be utilized by the
21 alternative energy credits program administrator to pay
22 Tier III alternative energy sources for Tier III
23 alternative energy credits that were otherwise not
24 purchased due to the failure to comply with subsection
25 (c.1).

26 * * *

27 Section 3. Sections 4 and 6 of the act are amended to read:

28 Section 4. Portfolio requirements in other states.

29 If an electric distribution [supplier] company or electric
30 generation company [provider] supplier sells electricity in any

1 other state and is subject to renewable energy portfolio
2 requirements in that state, they shall list any such requirement
3 and shall indicate how it satisfied those renewable energy
4 portfolio requirements. To prevent double-counting, the electric
5 distribution [supplier] company or electric generation company
6 shall not satisfy Pennsylvania's alternative energy portfolio
7 requirements using alternative energy used to satisfy another
8 state's portfolio requirements or alternative energy credits
9 already purchased by individuals, businesses or government
10 bodies that do not have a compliance obligation under this act
11 unless the individual, business or government body sells those
12 credits to the electric distribution company or electric
13 generation supplier. Energy derived from alternative energy
14 sources inside the geographical boundaries of this Commonwealth
15 shall be eligible to meet the compliance requirements under this
16 act. Energy derived from alternative energy sources located
17 outside the geographical boundaries of this Commonwealth but
18 within the service territory of a regional transmission
19 organization that manages the transmission system in any part of
20 this Commonwealth shall only be eligible to meet the compliance
21 requirements of electric distribution companies or electric
22 generation suppliers located within the service territory of the
23 same regional transmission organization. For purposes of
24 compliance with this act, alternative energy sources located in
25 [the PJM Interconnection, L.L.C. regional transmission
26 organization (PJM) or its successor] PJM's service territory
27 shall be eligible to fulfill compliance obligations of all
28 Pennsylvania electric distribution companies and electric
29 generation suppliers. Energy derived from alternative energy
30 sources located outside the service territory of a regional

1 transmission organization that manages the transmission system
2 in any part of this Commonwealth shall not be eligible to meet
3 the compliance requirements of this act. Electric distribution
4 companies and electric generation suppliers shall document that
5 this energy was not used to satisfy another state's renewable
6 energy portfolio standards.

7 Section 6. Health and safety standards.

8 The department shall cooperate with the Department of Labor
9 and Industry as necessary in developing health and safety
10 standards, as needed, regarding facilities generating energy
11 from Tier I and Tier II alternative energy sources. The
12 department shall establish appropriate and reasonable health and
13 safety standards to ensure uniform and proper compliance with
14 this act by owners and operators of facilities generating energy
15 from Tier I and Tier II alternative energy sources as defined in
16 this act.

17 Section 4. Section 7 of the act is amended by adding a
18 subsection to read:

19 Section 7. Interagency responsibilities.

20 * * *

21 (d) Enforcement.--In addition to any powers expressly
22 specified under this act, the commission may enforce the
23 provisions of this act in accordance with the commission's
24 regulations and orders and the commission may modify or rescind
25 the regulations or orders. Nothing in this subsection shall be
26 construed to exclude any authority which the commission would
27 otherwise have under this act or 66 Pa.C.S. (relating to public
28 utilities).

29 Section 5. The act is amended by adding sections to read:

30 Section 8.1. Tier III alternative energy sources.

1 (a) Participation.--An alternative energy source seeking to
2 apply for participation in the Tier III program shall file a
3 written notice with the commission. The written notice shall
4 contain all of the following information:

5 (1) The alternative energy source's qualifications as a
6 Tier III alternative energy source.

7 (2) The estimated generation of the alternative energy
8 resources consistent with subsection (b) (2).

9 (3) The alternative energy source's commitment to sell
10 the entire output of the alternative energy source as Tier
11 III credits for at least six reporting periods with the
12 commission no later than 90 days after the start of the first
13 Tier III program reporting period. The provisions of
14 subsection (b) shall apply for the entire first reporting
15 period if the alternative energy source is designated as a
16 Tier III alternative energy source by the commission.

17 (b) Review.--

18 (1) The alternative energy source shall submit the
19 notice filed under subsection (a) to the Legislative
20 Reference Bureau for publication in the Pennsylvania Bulletin
21 in the first available issue after filing the notice with the
22 commission. Any comments in response to the notice filed
23 under subsection (a) shall be submitted no later than 20 days
24 after the notice is published in the Pennsylvania Bulletin
25 and any reply comments shall be submitted no later than 10
26 days after the initial comments are submitted.

27 (2) The commission shall review each notice filed under
28 subsection (a) and all comments submitted under this
29 paragraph and rank each applicant for participation in the
30 Tier III program from first to last based on how well the

1 alternative energy source satisfies the criteria specified
2 under this act. No later than 90 days after reviewing each
3 notice filed under subsection (a), the commission shall
4 select the applicants that will participate in the Tier III
5 program according to their ranking. Beginning with the top-
6 ranked applicant and continuing in rank order, the commission
7 shall select applicants up to the point at which the combined
8 sum of megawatt hours of estimated generation by all selected
9 applicants equals approximately 50% of the total number of
10 megawatt hours of electricity distributed by electric
11 distribution companies in this Commonwealth, net of system
12 losses, for the latest calendar year reported in the most
13 recent Electric Power Outlook or other report reviewing the
14 generation, transmission and distribution capacity in this
15 Commonwealth published by the commission. For the purposes of
16 this calculation, the estimated generation shall be as
17 follows:

18 (i) For existing alternative energy resources fueled
19 by nuclear fission, the estimated generation shall be
20 equal to the product of 77% multiplied by 8,760 hours per
21 year multiplied by the nameplate capacity of the plant.

22 (ii) For existing alternative energy resources not
23 fueled by nuclear fission, the estimated generation shall
24 be equal to the generation output of the resources in the
25 calendar year which concludes immediately prior to the
26 date upon which qualification applications are due.

27 (iii) For new alternative energy resources, the
28 estimated generation is equal to the product of 8,760
29 hours per year multiplied by the nameplate capacity of
30 the resource multiplied by the average capacity factor of

1 similar existing resources.

2 (3) The commission shall select the marginal applicant
3 to participate in the Tier III program if the addition of 50%
4 of the estimated generation produced by the marginal
5 applicant does not cause the combined sum of megawatt hours
6 of estimated generation from all selected applicants,
7 including the marginal unit, to exceed 50% of the total
8 number of megawatt hours of electricity distributed by
9 electric distribution companies in this Commonwealth in the
10 calendar year which concludes immediately prior to the date
11 upon which qualification applications are due.

12 (4) Once designated as a Tier III alternative energy
13 source, an alternative energy source shall continue to be
14 considered a Tier III alternative energy source as long as
15 the alternative energy source continues to meet the criteria
16 specified under this act.

17 (c) Transfers and payments.--

18 (1) No later than 35 days after the close of each
19 reporting period, each Tier III alternative energy source
20 shall transfer all Tier III alternative energy credits for
21 the reporting period to the alternative energy credit program
22 administrator. The program administrator shall hold the Tier
23 III alternative energy credits on behalf of the Tier III
24 alternative energy sources for the sole purpose of
25 administering the Tier III program.

26 (2) No later than seven days after all Tier III
27 alternative energy sources have transferred the credits under
28 paragraph (1), each electric distribution company shall
29 purchase Tier III alternative energy credits from the
30 alternative energy credit program administrator at the Tier

1 III alternative energy credit reporting period price for the
2 reporting period to satisfy each electric distribution
3 company's Tier III obligations.

4 (3) No later than seven days after each electric
5 distribution company purchases Tier III alternative energy
6 credits under paragraph (2), the alternative energy credit
7 program administrator shall pay each Tier III alternative
8 energy source for the Tier III alternative energy credits
9 transferred to the alternative energy credit program
10 administrator under paragraph (1) in accordance with the
11 following:

12 (i) If the total quantity of Tier III alternative
13 energy credits transferred to the alternative energy
14 credit program administrator is less than the sum of the
15 Tier III shares for all electric distribution companies
16 in this Commonwealth, then each electric distribution
17 company's Tier III share for that delivery year shall be
18 each electric distribution company's proportional share
19 of transferred Tier III credits. An electric distribution
20 company's proportional share shall be a percentage equal
21 to the total electric energy sold in a service territory
22 by the electric distribution company and electric
23 generation suppliers divided by the total electric energy
24 sold by all electric distribution companies and electric
25 generation suppliers in this Commonwealth.

26 (ii) If the sum of Tier III alternative energy
27 credits transferred to the alternative energy credit
28 program administrator from all Tier III alternative
29 energy sources is greater than the sum of the Tier III
30 shares for all electric distribution companies in this

1 Commonwealth, then each Tier III alternative energy
2 source shall be paid for each of the Tier III alternative
3 energy source's prorated share of transferred Tier III
4 credits. Tier III alternative energy credits transferred
5 to the program administrator that exceed the sum of the
6 Tier III shares for all electric distribution companies
7 in this Commonwealth shall be retired. An alternative
8 energy source's prorated share shall be a percentage
9 equal to the sum of Tier III shares for all electric
10 distribution companies in this Commonwealth divided by
11 the sum of Tier III alternative energy credits
12 transferred to the program administrator from all Tier
13 III alternative energy sources. Credits purchased by
14 electric distribution companies may not be transferred,
15 sold or assigned to any other entity.

16 (d) Suspension of operations.--

17 (1) A designated Tier III alternative energy source
18 shall be excused from the designated Tier III alternative
19 energy source's commitment to operate for at least six
20 reporting periods and shall no longer receive Tier III
21 alternative energy credits if any of the following apply:

22 (i) The designated Tier III alternative energy
23 source suspends or ceases operations, despite the
24 designated Tier III alternative energy source's
25 reasonable efforts to continue operations, due to an
26 event beyond the designated Tier III alternative energy
27 source's control, including, but not limited to, acts of
28 God, flood, drought, earthquake, storm, fire, lightning,
29 epidemic, war, riot, labor or material shortage, sabotage
30 or explosion. The designated Tier III alternative energy

1 source shall no longer be excused from performance and
2 payment of Tier III alternative credits after the
3 conclusion of an event specified under this subparagraph.

4 (ii) The General Assembly enacts a new law imposing
5 a material new tax, special assessment or fee on the
6 generation of electricity, the ownership or leasehold of
7 a generating unit or the privilege or occupation of the
8 generation, ownership or leasehold of generation units by
9 a designated Tier III alternative energy source.

10 (iii) The Congress of the United States or General
11 Assembly enacts a law that materially reduces the Tier
12 III alternative energy credit reporting period price.

13 (iv) The Federal Government or the Commonwealth
14 takes final action relating to the provision of Tier III
15 alternative energy credits that has the effect of
16 eliminating a material portion of a designated Tier III
17 alternative energy source's anticipated future revenue,
18 taking into account the benefits to be provided to a
19 designated Tier III alternative energy source under the
20 Tier III program.

21 (v) The designated Tier III alternative energy
22 source requires capital expenditures in excess of
23 \$40,000,000 that were not known or reasonably foreseeable
24 at the time of the submission of the alternative energy
25 source's qualifications under subsection (a) as a Tier
26 III alternative energy source and the capital
27 expenditures are expenditures that a prudent owner or
28 operator of a designated Tier III alternative energy
29 source would not undertake.

30 (vi) The United States Nuclear Regulatory Commission

1 terminates the designated Tier III alternative energy
2 source's license.

3 (e) Expiration.--

4 (1) This section shall expire after an effective cost of
5 carbon emissions exists in this Commonwealth that is equal to
6 no less than an average of \$15 per ton over three consecutive
7 reporting periods as a result of the enactment of a Statewide
8 emissions fee program or participation by the Commonwealth in
9 a regional multistate greenhouse gas program. Tier III
10 alternative energy sources shall receive payments for Tier
11 III alternative energy credits as provided under subsection
12 (c) for credits generated prior to the effective date of the
13 enactment of a Statewide emissions fee program or
14 participation by the Commonwealth in a regional multistate
15 greenhouse gas program.

16 (2) Upon the enactment of a Statewide emissions fee
17 program or participation by the Commonwealth in a regional
18 multistate greenhouse gas program, the commission shall
19 submit a notice to the Legislative Reference Bureau for
20 publication in the Pennsylvania Bulletin.

21 (3) This section shall expire on the date the notice
22 under paragraph (2) is published in the Pennsylvania
23 Bulletin.

24 Section 8.2. Capacity payments to alternative energy sources.

25 (a) Program.--The alternative energy credits program
26 administrator shall establish and administer a program in which
27 alternative energy systems may opt to supply and be paid for
28 capacity through a means other than the centralized base
29 residual auction for capacity operated by PJM as authorized by
30 the Federal Energy Regulatory Commission. The duties of the

1 program administrator shall include, but not be limited to, all
2 of the following:

3 (1) Establishing a process by which an alternative
4 energy system is permitted to notify PJM, consistent with
5 requirements approved by the Federal Energy Regulatory
6 Commission, of the decision to opt out of the centralized
7 base residual auction for capacity and sell the alternative
8 energy system's capacity through other mechanisms.

9 (2) Providing any determinations required by PJM with
10 respect to an alternative energy system, including a
11 calculation of the commensurate amount of customer load that
12 will not participate in the centralized base residual auction
13 for capacity as a result of an alternative energy system's
14 decision to sell the alternative energy system's capacity
15 through other mechanisms. If consistent with requirements
16 approved by the Federal Energy Regulatory Commission, the
17 alternative energy system's capacity shall be calculated pro
18 rata across all load-serving entities in this Commonwealth.

19 (3) Determining the amount that will be paid for the
20 capacity of an alternative energy system that opts out of the
21 centralized base residual auction for capacity for each
22 applicable reporting period, which shall be equal to the
23 generation capacity of the alternative energy system as
24 determined in accordance with PJM requirements multiplied by
25 the locational delivery area price established by PJM in the
26 centralized base residual auction for capacity or successor
27 mechanism approved by the Federal Energy Regulatory
28 Commission for the location where the alternative energy
29 system is located.

30 (b) Payments.--In the event that PJM does not operate a

1 settlement mechanism under which alternative energy systems that
2 make elections under subsection (a) can receive payments from
3 load-serving entities, the alternative energy credits program
4 administrator shall calculate the total amount due to the
5 alternative energy system under subsection (a) (3) and notify the
6 electric distribution company of the electric distribution
7 company's share of the amount based upon the electric
8 distribution company's pro rata share of the electric energy
9 sold to retail electric customers in this Commonwealth during
10 the applicable reporting period. No later than seven days after
11 the electric distribution company receives the notice under this
12 subsection, the electric distribution company shall pay the
13 amount to the program administrator. The electric distribution
14 company shall then forward the amount due to the alternative
15 energy system under subsection (a) (3).

16 (c) Deadline.--The alternative energy credits program
17 administrator shall establish the program under subsection (a)
18 within 90 days after the later of the following:

19 (1) The effective date of this section.
20 (2) The date when PJM rules that allow alternative
21 energy systems to opt out of the centralized base residual
22 auction are authorized by the Federal Energy Regulatory
23 Commission.

24 Section 6. This act shall take effect in 60 days.